

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

CYNTHIA EASLEY, Individually and as
Administrator of the Estate of
CHRISTOPHER B. EASLEY, Deceased,

Plaintiff,

Case No. 02-C-1065

v.

SERGEANT MICHAEL B. REUSS,

Defendant.

OPINION AND ORDER

Following the court's issuance of an Opinion and Order granting summary judgment to the Defendant and entering judgment, the Plaintiff has moved the court to reconsider. In her reply brief the Plaintiff reveals that this motion is being brought pursuant to Federal Rule of Civil Procedure 59(e).

There are only three valid grounds for a Rule 59(e) motion—newly discovered evidence, an intervening change in the law, and manifest error of law. See Cosgrove v. Bartolotta, 150 F.3d 729, 732 (7th Cir. 1998). The arguments and supporting papers submitted by the Plaintiff fall into none of these categories. The Plaintiff is merely rearguing issues raised during the summary judgment proceeding or attempting to introduce evidence that is not material. Even if the evidence is material, it is not “new evidence” because it was available or it could have been discovered prior to the filing of the motion for summary judgment. The Defendant concedes that some audiotapes were not produced by the City of Lake Geneva (a nonparty) until after the

motion for reconsideration was filed. However, the Plaintiff has failed to demonstrate that anything on the tapes is material to the issues presented by this case. Consequently, the court will not reopen or vacate its judgment.

In the alternative, the Plaintiff asks the court for leave to file an amended complaint raising a claim for spoliation of evidence. Such a claim would be a supplemental state claim governed by Wisconsin law. The court will not allow the filing of an Amended Complaint because the proposed amendment would be futile in that Wisconsin does not recognize an independent claim for spoliation of evidence. See Estate of Neumann v. Neumann, 242 Wis. 2d 205, 245, 626 N.W.2d 821, 841 (Ct. App. 2001).

Accordingly, the court ORDERS that "Plaintiff Cynthia Easley's Motion for Reconsideration and Motion for Leave to File Amended Complaint" (filed December 29, 2005) IS DENIED.

IT IS FURTHER ORDERED that the Clerk of Court shall amend the Judgment entered on December 15, 2005, by adding the provision that:

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff's requests for relief pursuant to Federal Rule of Civil Procedure 59(e) are denied.

Done and Ordered in Chambers at the United States Courthouse, Milwaukee, Wisconsin, this 2nd day of February, 2006.

s/ Thomas J. Curran
Thomas J. Curran
United States District Judge